

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

HATEM MORRAR,
Plaintiff,

v.

MICHAEL CHERTOFF,
AS THE DIRECTOR OF
THE DEPARTMENT OF HOMELAND
SECURITY, ROBERT S. MUELLER, III
AS THE DIRECTOR OF FEDERAL
BUREAU OF INVESTIGATIONS
Defendants

No.: 08 C 151

A# 047 917 872

**PLAINTIFF'S RESPONSE TO DEFENDANT'S STATEMENT OF
MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE**

Plaintiff, HATEM MORRAR ("Morrar") by his attorneys Brodsky & Odeh states in response to the Defendants Statement of Material Facts As To Which There Is No Genuine Issues as follows:

A. Parties

1. Plaintiff Hatim Morrar is a 25 year old native of Palestine and citizen of Jordan, and he seeks to have his Petition for Naturalization (N-400) adjudicated. Decl.of F.Gerard Heinauer ¶ 3, attached as Ex. 1. Morrar became a Legal Permanent Resident Of the United States on September 1, 2001. Cmpl. ¶ 1; Ex. 1 ¶ 4. Morrar obtained this status as the beneficiary of a family-based visa petition filed by his U.S. citizen Parent. Ex 1 ¶ 4.

RESPONSE: No Dispute.

2. Defendant Michael Chertoff is the Director of the Department of Homeland Security. Defendant Robert S. Mueller, III, is the Director of the Federal Bureau of Investigations. Cmpl. ¶ 5.

RESPONSE: No Dispute.

B. Jurisdiction and Venue

3. Morrar brings this mandamus action pursuant [28] U.S.C. § 1329; 28 U.S.C. §§ 1331, 1361, and [8] U.S.C. § 1447 (b). However, the court does not have jurisdiction under 8 U.S.C. § 1447 (b). If the court rules otherwise, venue is proper in the Northern District of Illinois.

RESPONSE: No Dispute, except that the Plaintiff asserts that this Court has jurisdiction.

C. United States Citizenship and Immigration Services Division

4. Morrar filed his petition on November 27, 2006, at the Department of Homeland Security (“DHS”), Citizenship and Immigration Services Division (“USCIS”), Nebraska Service Center, Lincoln, Nebraska, where it remains pending. Ex 1 ¶ 5.

RESPONSE: No Dispute.

5. Naturalization applications are filed at one of four regional mail- in Service Centers, Ex 1 ¶ 6. The Nebraska Service Center accepts and processes these applications from aliens living in 20 Midwestern and Northwestern states, including Illinois. Id.

RESPONSE: No Dispute.

6. The Service Centers pre-process naturalization cases on a mail -in basis only; the Centers do not conduct the required in-person interviews. Ex. 1 ¶ 7.

RESPONSE: No Dispute.

7. The Service Centers receipt the applications, obtain the relevant alien registration file from the National Records Center, and initiate the required background checks. Ex. 1 ¶ 8.

RESPONSE: No Dispute.

8. Once a background check is complete, and any adverse information is reviewed and resolved, the applicant is scheduled for an in person interview by the CIS district office having

jurisdiction over his or her place of residence. Id.

RESPONSE: No Dispute.

9. After the interview, and review of any subsequently filed required evidence, the application is adjudicated by a district office and, if approved, the applicant is scheduled for the next available citizenship oath ceremony. Id.

RESPONSE: No Dispute.

10. General requirements for naturalization eligibility are that the applicant has resided continuously, after being lawfully admitted for permanent residence, within the United States for at least five years; the applicant must be of good moral character; and attached to the principles of the Constitution of United States. Ex. 1 ¶ 9.

RESPONSE: No Dispute.

11. Most applicants are also required to establish, during a mandatory in-person interview or examination, and understanding of the English language, and knowledge and understanding of the fundamentals of the history, and of the principles and form of government of the United States. Id.

RESPONSE: No Dispute, except to state that the Plaintiff in this case has not been scheduled for an interview.

12. In order to be admitted to citizenship, the applicant must take an oath in a public ceremony renouncing his or her allegiance to any foreign state of which the applicant was before a subject or citizen, and swearing allegiance to the United States government. Ex. 1 ¶ 9.

RESPONSE: No Dispute.

13. The oath ceremonies are generally performed in the lobby (outside of normal business hours) or another area of the district office; special ceremonies are sometimes scheduled in federal district court or at another public location (e.g., Fourth of July ceremonies in conjunction with local/city events.) Due to staffing and space limitations and various other duties and priorities, each district office can only accommodate a certain number of naturalization interview slots or oath ceremony attended each month. Ex 1 ¶ 11.

RESPONSE: No Dispute.

14. During fiscal year 2006, the total number of persons naturalized by USCIS was 702,589. The estimated number of naturalization approvals/ oaths for fiscal year 2007 is presently 659,233. Ex 1 ¶ 12.

RESPONSE: No Dispute.

15. Congress requires completion of an FBI criminal background investigation of any applicant for naturalization before the application can be adjudicated by USCIS. Plaintiff's application for naturalization is not ready to be scheduled for interview until the FBI completes its background investigations. Ex 1 ¶ 13.

RESPONSE: Disputes as the USCIS no longer requires a FBI criminal background investigation before the application can be adjudicated. (See below)

16. In April 2006, USCIS initiated a new policy of not scheduling naturalization applicants for interview until the FBI name check is completed. Prior to the change in policy, interviews could be scheduled and conducted before the name check still pending, but could not be approved until the results of the name check were received from the FBI. Ex. 1 ¶ 14.

RESPONSE: No Dispute.

17. When an alien applies for naturalization, USCIS conducts several forms of security and background checks to ensure that the alien is eligible for the immigration benefit and that he or she is not a risk to national security or public safety. In addition to records checks against DHS's own immigration systems, these background check currently include (a) a Federal Bureau of Investigations (FBI) fingerprint check for relevant criminal history records on the alien (e.g., arrests and convictions); (b) a check against the DHS-managed Interagency Border Inspection System (IBIS) that contains records and "watch list" information from more than twenty federal law enforcement and intelligence agencies; and (c) an FBI name check, which is run against FBI investigative databases containing information that is not necessarily revealed by the FBI's fingerprint check or IBIS. Ex. 1 ¶ 15.

RESPONSE: No Dispute.

18. These law enforcement checks have revealed significant derogatory information on various alien applicants for immigration benefits, including applicants seeking naturalization, which has resulted in the alien being found ineligible for the benefits and USCIS's denial of the application. Ex. 1 ¶ 16.

RESPONSE: No Dispute.

19. Since 9/11, USCIS has submitted millions of name check requests to the FBI for naturalization and other types of immigration applications, thus taxing that agency's resources and creating a backlog in FBI's performance of complete security checks. During the initial submission period of December 2002 and January 2003, USCIS submitted almost 3 million names to the FBI. Ex. 1 ¶ 17.

RESPONSE: No Dispute.

20. Morrar's name check request was electronically submitted to the FBI on December 4, 2006, less than one week after his Form N-400 was filed. The FBI acknowledged receipt of the name check request on December 14, 2006. The name check remains pending. Morrar can't be scheduled for an interview on his naturalization application until the name check results are received from the FBI. Ex. 1 ¶ 18.

RESPONSE: No Dispute.

21. Morrar's preliminary IBIS and fingerprint checks have been performed. The IBIS and fingerprint checks may be refreshed again prior to the interview or oath ceremony. Ex. 1 ¶ 19.

RESPONSE: No Dispute.

22. Of a total figure of 1,044,302 naturalization filings currently pending with USCIS nationwide, there are approximately 176,425 awaiting responses on FBI name checks. Ex. 1 ¶ 20.

RESPONSE: No Dispute.

23. Cases in which the pending FBI name check is the only impediment to final adjudication are audited on a weekly basis in order to identify those in which a response from the FBI has been received. Once the security checks are completed, the case can be forwarded to the district office for interview as time slots become available. Ex. 1 ¶ 21.

RESPONSE: No Dispute.

24. Applicants for naturalization hold lawful permanent resident (LPR) cards ("green cards") which allow them to lawfully work in the United States and to return from travel abroad while the naturalization application is pending. Morrar has been issued a green card that is valid proof of his status as a lawful permanent resident through October 2011. Ex. 1 ¶ 22.

RESPONSE: No Dispute.

25. The USCIS website at www.uscis.gov includes several advisories and public notices regarding processing delays that apply to all aliens, and the reasons for them. USCIS endeavors to give the best customer service possible to all customers, despite the millions of applications and petitions pending, and within the constraints of resource limitations. The website advises that due to a large increase in naturalization filings, the average time to complete a routine naturalization case is presently 18 months. Ex. 1 ¶ 23.

RESPONSE: No Dispute.

26. The Nebraska Service Center is processing Morrar's naturalization application in accordance with standard procedures. Ex. 1 ¶ 24.

RESPONSE: No Dispute.

/s/ Reem Odeh

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